

CANADA / JUDGMENT

Walker v. Kierans

2024 BCCA 119

COURT

British Columbia Court of Appeal

DECIDED

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2024 BCCA 119 Walker v. Kierans COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Walker v. Kierans, 2024 BCCA 119 Date: 20240328 Dockets: CA49417; CA49418 Docket: CA49417 Between: Kathleen Walker Appellant (Petitioner) And Margaret Mary Kierans, Public Guardian and Trustee of British Columbia, LArche Greater Vancouver, Community Living British Columbia, and Paul Kierans Respondents (Respondents)

- and - Docket: CA49418 Between: Kathleen Walker Appellant (Respondent) And Margaret Mary Kierans Respondent (Petitioner) And Public Guardian and Trustee of British Columbia Respondent (Respondent) Before: The Honourable Mr. Justice Voith On appeal from: An order of the Supreme Court of British Columbia, dated October 18, 2023 (Kierans (Re), 2023 BCSC 1841, Vancouver Dockets S220769 and S229990). The Appellant, appearing in person: K. Walker Counsel for the Respondent, Margaret Mary Kierans: C.R. Dheensaw Counsel for the Respondent, Public Guardian and Trustee of British Columbia: M.T. Wolf Place and Date of Hearing: Vancouver, British Columbia February 5, 2024 Place and Date of Judgment: Vancouver, British Columbia March 28, 2024 Summary: At the start of the hearing of the appellant's appeal, the appellant requested the judge recuse himself. The appellant's concern was that she had appeared before him several times in the past. Held: Application dismissed. The appellant has not met the burden of establishing that a reasonably informed person would conclude that the judge was unable to hear and decide the appeal fairly and objectively. Reasons for Judgment of the Honourable Mr. Justice Voith:

- [1] At the commencement of this appeal, Ms. Walker asked that both Justice Skolrood and I recuse ourselves. Though Ms. Walker did not file a formal application in support of her request, the division agreed to hear her. After hearing Ms. Walker's submissions, her request was denied with reasons to follow.
- [2] Justice Skolrood and I have each, consistent with established practice, addressed Ms. Walker's request in separate reasons that are being released concurrently with the reasons in her appeal.

Analysis

- [3] Ms. Walker has appealed the decision of a chambers judge dismissing her application to be appointed committee of the person of her brother under the Patients Property Act, R.S.B.C. 1996, c. 349.
- [4] Ms. Walker does not suggest her request that I recuse myself is based on any actual or apprehended bias. Ms. Walker's only stated concern with my hearing her appeal arises from the fact that she has appeared before me in the past. To be specific, Ms. Walker appeared before me in chambers in 2012, when I was a trial judge, on her application to be discharged from bankruptcy. She has also appeared before me in connection with an earlier appeal seeking to reinstate visitation rights with her brother at the care facility where he resides and on a chambers application brought in this appeal.
- [5] Respectfully, the concern she has expressed does not, on a principled basis, support her request. The narrow issue Ms. Walker raises was recently addressed in *Pereira v. Dexterra Group Inc.*, 2023 BCCA 201:
- [12] The strong presumption that judges act impartially means that a party must meet a high burden to prove that a reasonable apprehension of bias exists. The longstanding test as repeated in *Yukon Francophone School Board* is:
- [20] The test for a reasonable apprehension of bias is undisputed and was first articulated by this Court as follows: ... what would an informed person, viewing the matter realistically and practically - and having thought the matter through - conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly. [Citation omitted.] (*Committee for Justice and Liberty v. National Energy Board*, 1976 CanLII 2 (SCC), [1978] 1 S.C.R. 369, at p. 394, per de Grandpré J. (dissenting))
- [14] This Court has had occasion to consider the question of judges hearing multiple matters involving the same party. The mere fact that a judge has heard another proceeding involving the same party does not displace the presumption of judicial impartiality. In *Jean Louis v. Jean Louis*, 2021 BCCA 481, this Court held:
- [14] The fact that a judge heard another matter in the same proceeding or a related proceeding involving the same party or witness does not displace the presumption of judicial impartiality, including where the judge decided against that party: see *Taylor Ventures Ltd. (Trustee of) v. Taylor*, 2005 BCCA 350; *Moshinsky-Helm v. Helm*, 2021 ABCA 373; *Klippenstein v. Manitoba Ombudsman*, 2015 MBCA 15; *Apotex Inc. v. Sanofi-Aventis Inc.*, 2008 FCA 394.
- [15] As summarized in *Taylor Ventures Ltd. (Trustee of) v. Taylor*, 2005 BCCA 350 [Taylor], the question of whether there is a reasonable apprehension of bias should be considered with the following principles in mind:
- a) a judge's impartiality is presumed;

- b) a party arguing for disqualification must establish that the circumstances justify a finding that the judge must be disqualified;
 - c) the criterion of disqualification is the reasonable apprehension of bias;
 - d) the question to be determined is what would an informed reasonable and right-minded person, viewing the matter realistically and practically, and having thought the matter through, conclude;
 - e) the test for disqualification is not satisfied unless it is proved that the informed, reasonable and right-minded person would think it more likely than not that the judge, whether consciously or unconsciously, not decide fairly;
 - f) the test requires demonstration of serious grounds on which to base the apprehension; and
 - g) each case must be examined contextually and the inquiry is fact-specific. Taylor at para. 7, referencing S.(R.D.).
- [6] Apart from the foregoing legal principles, which are dispositive of Ms. Walker's request, there are other practical realities that are relevant. First, when a litigant repeatedly appears in our courts, in one or more matters, it is not uncommon for that litigant to appear before the same judge. Indeed, to some extent it is almost inevitable this will occur. In this case, for example, Ms. Walker will have appeared, in just the last 16 months, before eight different judges of our court.
- [7] Second, the consequence of acceding to Ms. Walker's request would be to adjourn her appeal. That result, in the absence of a proper basis to do so, would be unfair to the respondents and would interfere with the proper administration of justice in our courts.
- [8] Ms. Walker has not met the burden of establishing that a reasonably informed person would conclude that I am unable to hear and decide her appeal fairly and objectively. Accordingly, I decline to recuse myself. Her application is dismissed. "The Honourable Mr. Justice Voith"

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